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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,278	03/10/2004	Daniel Reis	REIS2	2934
1444	7590	01/06/2009		
BROWDY AND NEIMARK, P.L.L.C.			EXAMINER	
624 NINTH STREET, NW			BROWN, MICHAEL A	
SUITE 300				
WASHINGTON, DC 20001-5303			ART UNIT	PAPER NUMBER
			3772	
			MAIL DATE	DELIVERY MODE
			01/06/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/797,278	<b>Applicant(s)</b> REIS ET AL.
	<b>Examiner</b> MICHAEL BROWN	<b>Art Unit</b> 3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1,2,7-10,12-23 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,7-10 and 12-23 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/0256/06)  
Paper No(s)/Mail Date \_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 7-9, 12, 14-15 and 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarey '713 in view of Dye.

Clarey discloses in figures 1-3 a splint for immobilizing and supporting a body part of a human by covering the body part from three sides, the splint comprising inflatable tubes 24, interconnected by non-inflatable parts 22, for achieving variable degrees of support, stiffness and restriction of movement, the tubes and the non-inflatable parts are made of a flexible material (col. 2, lines 65-68), having two opposing edges (non inflatable part 22, fig. 3, has a first edge connected to 24 on the left side of 22 and a second edge connected to the opposite 24 on the right side of 22), (inflatable tubes 24 have a first edge connected at 18 and a second edge connected before 22, in fig. 3), the splint is constructed to be wrapped around a body part in a circumferential direction (fig. 2), each of the non-inflatable parts is located to extend between two of the inflatable tubes (fig. 1), the inflatable tubes and the non-inflatable parts extend in a direction transverse to the circumferential direction (fig. 1), at least one pressure source (the tubes can be inflated oral), at least one adjustable member (velcro, col. 3, lines 25-30, for connecting the splint edges together, the splint takes up the shape of the body

part (fig. 2), the tightness of the splint on the body part can be controlled by fastening or loosening of the adjustable member, the pressure is controlled by a valve (col. 3, lines 30-35), the adjustable member is detachable (velcro is detachable, removing the hook from the loop fasteners). However, Clarey doesn't disclose ventilation holes in the non-inflatable parts or the splint being made of two layers of nylon which are jointed by soldering means and coated with polyurethane. Dye teaches in figures 1-7 a splint comprising ventilation holes 44, two layers of nylon (polyester) joined by a soldering means (heat sealing) and a polyurethane coating (a polymer). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the ventilation holes as taught by Dye could be incorporated into the non-inflatable parts disclosed by Clarey in order to use the holes to ventilate the skin to prevent overheating of the skin while wearing the splint. The nylon material would allow the splint to expand to fit different user. The polyurethane would protect the nylon and make the splint more durable. It is old and well known that polyurethane is a polymer.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Porrata.

Porrata teaches in figure 1 a splint comprising a pressure source that is a hand pump 26. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the hand pump as taught by Porrata could be substituted for the oral inflation disclosed by Clarey because both inflatable sources are interchangeable.

Claims 13 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Simons.

Simons teaches in figure 3 loops (66, 67) that act as a suspension strap. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the loops as taught by Simons could be incorporated into the splint disclosed by Clarey and Dye in order to use the loops to suspend the device. The loops are connected to the outer edge of the device. Consequently they can be connected to the edge of the splint.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL BROWN whose telephone number is (571)272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Brown/  
Primary Examiner, Art Unit 3772